



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0139]

Accident Reporting: Change to Regulatory Guidance Concerning the Use of the Term “Medical Treatment”

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of revised regulatory guidance.

SUMMARY: FMCSA announces a revision to its regulatory guidance concerning the use of the term “medical treatment” for the purpose of accident reporting. The revised guidance explains that an x-ray examination is a diagnostic procedure and should no longer be considered “medical treatment” in determining whether a crash should be included on a motor carrier’s accident register.

DATES: This revised guidance is applicable on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and expires [INSERT DATE 5 YEARS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division, FMCSA, (202) 366-2722, richard.clemente@dot.gov. If you have questions about viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

A. Viewing Documents

To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov> and insert the docket number (FMCSA-2021-0139) in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the internet, you may view the docket

online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

I. Background

The Federal Motor Carrier Safety Regulations define *Accident* as an occurrence involving a commercial motor vehicle (CMV) operating on a highway in interstate or intrastate commerce which results in: (1) a fatality, (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles being towed from the scene (49 CFR 390.5T). Regulatory guidance in Question 27 for 49 CFR 390.5 and 390.5T currently considers an x-ray examination and other imaging, such as computed tomography, as medical treatment and reads as follows:

Question 27:

A person is transported to a hospital from the scene of a commercial motor vehicle traffic accident.

In one situation, the person undergoes observation or a “checkup.[”] Is this considered “medical treatment,” making the CMV occurrence an “accident” for purposes of the Federal Motor Carrier Safety Regulations?

In another situation, the person undergoes x-ray examination or is given a prescription, but is released from the facility without being admitted as an inpatient. Is the x-ray or prescription considered “medical treatment,” making the CMV occurrence [an] “accident” for purposes of the Federal Motor Carrier Safety Regulations?

Guidance: In the first situation, no. A person who does not receive treatment for diagnosed injuries or other medical intervention directly related to the accident, has not received “medical treatment” as that term is used in § 390.5T.

In the second situation, yes. A person who undergoes x-ray examination (or other imaging, such as computed tomography or CT), or is given prescription medication (or the prescription itself), has received “medical treatment.”

In accordance with 49 CFR 390.15(b), motor carriers are required to maintain an accident register for 3 years after the date of each “accident.” A motor carrier’s Crash Indicator Behavior Analysis and Safety Improvement Category (BASIC) score illustrates a historical pattern of crash involvement, including frequency and severity. The Crash Indicator BASIC score is based on information from State-reported crashes that meet reportable crash standards.

A petition was submitted to FMCSA requesting a revision to Question 27, stating that an x-ray is a diagnostic test that may find no injury and should not be considered a form of medical treatment. The petitioner suggested that the Agency mirror the Occupational Safety and Health Administration's definition of medical treatment that excludes diagnostic procedures, such as x-rays and blood tests. FMCSA agrees with the revision.

II. Revised Guidance

FMCSA clarifies when a person is considered to have received medical treatment after an accident. FMCSA revises Question 27 under 49 CFR 390.5 and 390.5T, which is available at <https://www.fmcsa.dot.gov/regulations/person-transported-hospital-scene-commercial-motor-vehicle-traffic-accident-one>, as indicated below.¹

This guidance lacks the force and effect of law, except as incorporated into a contract, and is not meant to bind the public in any way. This guidance document is intended only to provide clarity to the public regarding existing requirements under the law or Agency policies.

Question 27:

A person is transported to a hospital from the scene of a commercial motor vehicle traffic accident.

In one situation, the person undergoes observation or a checkup. Is this considered "medical treatment," making the CMV occurrence an "accident" for purposes of the Federal Motor Carrier Safety Regulations?

In another situation, the person undergoes x-ray examination or is given a prescription but is released from the facility without being admitted as an inpatient. Is the x-ray or prescription considered "medical treatment," making the CMV occurrence an "accident" for purposes of the FMCSRs?

Guidance: In the first situation, no. A person who does not receive treatment for diagnosed injuries or other medical intervention directly related to the accident, has not received "medical treatment" as that term is used in 49 CFR 390.5 or 390.5T.

In the second situation, a person who undergoes an x-ray examination (or other imaging, such as computed tomography or CT) has not received "medical treatment." The x-ray examination is a diagnostic procedure but is not considered "medical treatment." However, a person who is given prescription medication (or the prescription itself) has received "medical treatment."

IV. Review of the Regulatory Guidance

¹ The revised guidance applies to both 49 CFR 390.5 and the temporary regulations in 49 CFR 390.5T that are currently in effect. See Unified Registration System; Suspension of Effectiveness, 82 FR 5292, 5310 (Jan. 17, 2017), as amended, 83 FR 22865, 22877 (May 17, 2018).

In accordance with section 5203(a)(2)(A) and (a)(3) of the Fixing America's Surface Transportation Act, Public Law 114-94, 129 Stat. 1312, 1535 (Dec. 4, 2015), the revised regulatory guidance will be posted in the guidance portal on FMCSA's website, <https://www.fmcsa.dot.gov/guidance>. The Agency will review it no later than 5 years after it is published and consider at that time whether the guidance should be withdrawn, reissued for another period up to 5 years, or incorporated into the Federal Motor Carrier Safety Regulations.

Robin Hutcheson,
Acting Administrator.

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